

from sales or services recognized as retail in the industry. Cash advances made as a convenience to a bereaved family are not included in computing the gross volume of sales made of business done when repaid. Of course, if interest is charged it would be included in the gross volume of sales and non-retail income.

(d) *Nonretail services.* Calling for and preparing bodies and crematory service for other funeral homes, burial insurance operations, and ambulance or livery transportation service (as distinguished from the use of ambulances or other vehicles as a necessary part of the undertaking, funeral, or burial services of the establishment), are some examples of a funeral home providing goods or services which will be “resold” or which are not recognized as retail.

(e) *Ambulance service.* The typical ambulance service establishment, engaged exclusively or nearly so in providing a specialized form of transportation for sick, injured, aged, or handicapped persons, is a part or branch of the transportation industry. Since there is no traditional retail concept in the transportation industry, such ambulance service establishments cannot qualify for the section 13(a)(2) exemption (see § 779.317). Income from the same typical ambulance services would be considered nonretail in applying the 25 percent tolerance for nonretail income in a funeral home. If an establishment engaged in a combination of funeral home and ambulance services meets all the tests for exemption under section 13(a)(2), as applied to the combined sales of both types of services, those of its employees who are engaged in the funeral home’s activities and functions will be exempt as employees of a retail or service establishment. This exemption, however, does not apply to any employee regularly engaged in non-exempt ambulance transportation activities in any workweek when he devotes a substantial amount of his working time to such nonexempt work. More than 20 percent of the employee’s working time in the workweek will, for enforcement purposes, be considered substantial.

(f) *Out-of-State sales.* An arrangement with a funeral home to embalm and

ship human remains to a point outside the State for burial is not a sale within the State. The reverse situation where an out-of-State funeral director ships the remains to a funeral home to arrange for local interment also is not a sale within the State.

(g) *Work for more than one establishment.* Employees performing central office, supply, or warehouse functions for more than one funeral home establishment are not within the exemption (see § 779.310). However, where certain mortuaries may operate more than one exempt establishment and where employees such as embalmers employed by an exempt funeral home may be called upon in a given workweek to perform for another exempt establishment or establishments in the same enterprise work which is a part of the funeral home services sold by that establishment or establishments to customers, such employees do not lose the exemption where at all times during the workweek the employee is employed by one or the other of such exempt establishments either inside or outside the establishment in the activities within the scope of its own exempt business (see § 779.311(b)). In addition, where an establishment offering complete funeral home services also has outlying chapels where only the funeral services of the deceased persons are conducted, employees of the main establishment who are otherwise exempt do not lose the exemption by virtue of the activities which they may perform in connection with the funeral services held at the chapel. These activities are in such a case part of their employment by the exempt main establishment.

CEMETERIES

§ 779.370 Cemeteries may qualify as exempt 13(a)(2) establishments.

(a) *General.* A cemetery may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that section, including the requirement that the retail or service establishment be open to the general public. So long as a cemetery is open to any persons of

a particular religion rather than merely the members of a specific organization or place of worship, it will be considered for enforcement purposes to be "open to the general public."

(b) *Annual dollar volume.* As used in the Act, annual gross volume means the gross receipts from all the business activities of the establishment during a 12-month period (see §§ 779.265 through 779.269). Sums received from the following types of transactions are part of the annual gross volume of sales made or business done:

- (1) Sales of lots or plots.
- (2) Annual tax or assessment levied on lot owners, and
- (3) Gifts or bequests.

Interest from any trust funds for permanent or current maintenance is also included in the annual gross volume of sales made or business done. The allocation of the gross receipts to any trust funds or other accounts of the establishment does not affect the annual gross volume.

(c) *Nonretail sales or income.* Sales of lots or plots to a burial society or a fraternal organization for the use of the members are sales for resale and as such may not be counted as part of the 75 percent of annual dollar volume of sales of goods or services which is not for resale and recognized as retail in the industry under section 13(a)(2). Such sales are counted as part of the annual gross volume in the period in which the transaction between the cemetery and the burial society or fraternal organization is completed. Any interest from trust funds or other investments also is not recognized as retail receipts under section 13(a)(2).

AUTOMOBILE, TRUCK AND FARM IMPLEMENT SALES AND SERVICES, AND TRAILER, BOAT AND AIRCRAFT SALES

§ 779.371 Some automobile, truck, and farm implement establishments may qualify for exemption under section 13(a)(2).

(a) *General.* The specific exemption from the provisions of sections 6 and 7 of the Act that was provided in section 13(a)(19) prior to the 1966 amendments for employees of a retail or service establishment which is primarily engaged in the business of selling auto-

mobiles, trucks, or farm implements was repealed. However, some such establishments may qualify for exemption from both the minimum wage and overtime pay provisions of the Act under section 13(a)(2) as retail or service establishments. These are establishments whose annual dollar volume is smaller than the amount specified in section 13(a)(2) or in section 3(s)(1) and which meet all the other requirements of section 13(a)(2) (see § 779.337). (Such establishments which do not qualify for exemption under section 13(a)(2) may have certain employees who are exempt only from the overtime pay provisions of the Act under section 13(b)(10). Section 13(b)(10) is applicable not only to automobile, truck, and farm implement dealers but also to dealers in trailers, boats, and aircraft. The section 13(b)(10) exemption is discussed in § 779.372 below.)

(b) *Application of the 75-percent test.* In determining whether, under the section 13(a)(2) exemption, 75 percent of an automobile, truck, or farm implement establishment's sales of goods or services are not for resale and are recognized as retail, the requirements for such classification, including the existence of a retail concept, as explained previously in this subpart, and the specific applications in the industry of these requirements in accordance with the following principles, will govern the classification of sales made by such establishments. The sales of goods or services described in paragraph (c) of this section and in paragraphs (e)(1) through (5) of this section may not be counted toward the required 75 percent. Such sales do not qualify as retail because they either are for resale, are outside the retail concept, or have been determined to lack the requisite recognition as retail sales or services. Other sales of goods or services by the dealer can qualify if they meet the requirements previously explained.

(c) *Nonretail automobile and truck sales and servicing.* None of the following sales of automobiles, trucks, automotive parts, accessories, servicing and repair work will be considered as retail:

(1) *Sales for resale.* For example, sales of new or used automobiles and trucks, tires, accessories or services, to service